

HOUSE BILL No. 1446

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8-1; IC 11-13-9; IC 35-33-8.7; IC 35-38-2.5; IC 35-44-3-5.

Synopsis: Offenders on home detention. Requires constant supervision of violent offenders and flight risks on home detention. Requires development of written criteria and procedures to determine if an offender placed on home detention is a violent offender or flight risk. Requires an entity monitoring an offender to: (1) provide local law enforcement agencies with information indicating whether an offender on home detention is an offender or a flight risk; (2) forward a photograph of the offender to local law enforcement; and (3) immediately contact a local law enforcement agency if the offender violates a condition of home detention.

Effective: July 1, 2003.

Reske, Koch, Chowning, Ulmer

January 14, 2003, read first time and referred to Committee on Human Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1446

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 11-8-1-6.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2003]: **Sec. 6.5. "Constant supervision" means the monitoring of**
- 4 **a violent offender twenty-four (24) hours each day.**
- 5 SECTION 2. IC 11-8-1-8.7 IS ADDED TO THE INDIANA CODE
- 6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 7 1, 2003]: **Sec. 8.7. "Flight risk" means a person who is placed on**
- 8 **parole for conviction of escape or attempted escape or failure to**
- 9 **return to lawful detention.**
- 10 SECTION 3. IC 11-8-1-8.8 IS ADDED TO THE INDIANA CODE
- 11 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 12 1, 2003]: **Sec. 8.8. (a) "Home" means:**
- 13 **(1) the interior living area of the temporary or permanent**
- 14 **residence of a person; or**
- 15 **(2) if a person's residence is a multiple family dwelling, the**
- 16 **unit in which the person resides, not including the:**
- 17 **(A) halls or common areas outside the unit where the**



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person resides; or

(B) other units, occupied or unoccupied, in the multiple family dwelling.

(b) The term includes a hospital, health care facility, hospice, group home, maternity home, residential treatment facility, and boarding house.

(c) The term does not include a public correctional facility or the residence of another person who is not part of the social unit formed by the person's immediate family.

SECTION 4. IC 11-8-1-8.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8.9. "Monitoring device" means an electronic device that:

(1) is limited in capability to recording or transmitting information regarding an offender's presence in or absence from the offender's home;

(2) is minimally intrusive upon the privacy of the offender or other persons residing in the offender's home; and

(3) with the written consent of the offender and other persons residing in the home at the time an order for home detention is entered, may record or transmit:

(A) visual images;

(B) oral or wire communication or any auditory sound; or

(C) information regarding the offender's activities while inside the offender's home.

SECTION 5. IC 11-8-1-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. "Security risk" means a person who is a threat to the physical safety of the public.

SECTION 6. IC 11-8-1-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. "Violent offender" means a person who meets either of the following conditions:

(1) Is placed on parole for conviction of any of the following offenses or attempted offenses:

(A) Battery (IC 35-42-2-1).

(B) Domestic battery (IC 35-42-2-1.3).

(C) Arson (IC 35-43-1-1).

(D) Stalking (IC 35-45-10-5).

(E) An offense involving a regulated explosive under IC 35-47.5-5.

(F) A crime identified as a "crime of violence" in

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1 **IC 35-50-1-2(a).**

2 **(2) Is a security risk.**

3 SECTION 7. IC 11-13-9 IS ADDED TO THE INDIANA CODE AS
4 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2003]:

6 **Chapter 9. Violent Offenders and Flight Risks on Home**
7 **Detention as a Condition of Parole**

8 **Sec. 1. This chapter applies to an offender who has been placed**
9 **on parole under IC 11-13-3 or IC 35-50-6-1.**

10 **Sec. 2. (a) The department shall establish written criteria and**
11 **procedures for determining whether an offender is a flight risk (as**
12 **defined in IC 11-8-1-8.7) or a violent offender (as defined in**
13 **IC 11-8-1-12).**

14 **(b) The department shall use the criteria and procedures**
15 **established under subsection (a) to establish a record keeping**
16 **system that allows the department to quickly determine whether an**
17 **offender placed on home detention as a condition of parole is a**
18 **flight risk or a violent offender.**

19 **Sec. 3. The department shall provide all law enforcement**
20 **agencies having jurisdiction in the place where the offender's home**
21 **detention is located with a list that includes the following**
22 **information:**

23 **(1) The offender's name, any known aliases, and the location**
24 **of the offender's home detention.**

25 **(2) The crime for which the offender was convicted and**
26 **placed on parole.**

27 **(3) The date the offender's home detention expires.**

28 **(4) The name, address, and telephone number of the parole**
29 **officer supervising the offender on home detention.**

30 **(5) An indication of whether the offender is a flight risk or a**
31 **violent offender.**

32 **(6) A photograph of the offender.**

33 **Sec. 4. Except for absences from the offender's home for reasons**
34 **set forth in IC 35-38-2.5-6(1), the department shall, at the**
35 **beginning of a period of home detention, set the monitoring device**
36 **and surveillance equipment to minimize the possibility that an**
37 **offender can enter another residence or structure without a**
38 **violation.**

39 **Sec. 5. (a) A contract agency described in subsection (b) or the**
40 **department shall immediately contact a local law enforcement**
41 **agency described in section 3 of this chapter upon determining that**
42 **a violent offender is violating a condition of home detention.**

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(b) The department shall use a monitoring device and surveillance equipment to maintain constant supervision of the violent offender. The department may do this by:

- (1) using its own equipment and personnel; or
- (2) contracting with an outside entity.

SECTION 8. IC 35-33-8.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 8.7. Pretrial Release and Home Detention

Sec. 1. As used in this chapter, "constant supervision" means the monitoring of a violent offender twenty-four (24) hours each day by means described in section 8 of this chapter.

Sec. 2. As used in this chapter, "flight risk" means a person who is charged with escape or attempted escape or failure to return to lawful detention.

Sec. 3. (a) As used in this chapter, "home" means:

- (1) the interior living area of the temporary or permanent residence of a person; or
- (2) if a person's residence is a multiple family dwelling, the unit in which the person resides, not including the:
 - (A) halls or common areas outside the unit where the person resides; or
 - (B) other units, occupied or unoccupied, in the multiple family dwelling.

(b) The term includes a hospital, health care facility, hospice, group home, maternity home, residential treatment facility, and boarding house.

(c) The term does not include a public correctional facility or the residence of another person who is not part of the social unit formed by the person's immediate family.

Sec. 4. "Monitoring device" means an electronic device that:

- (1) is limited in capability to recording or transmitting information regarding an offender's presence in or absence from the offender's home;
- (2) is minimally intrusive upon the privacy of the offender or other persons residing in the offender's home; and
- (3) with the written consent of the offender and other persons residing in the home at the time an order for home detention is entered, may record or transmit:
 - (A) visual images;
 - (B) oral or wire communication or any auditory sound; or
 - (C) information regarding the offender's activities while



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1 inside the offender's home.

2 **Sec. 5.** As used in this chapter, "security risk" means a person
3 who is a threat to the physical safety of the public.

4 **Sec. 6.** As used in this chapter, "violent offender" means a
5 person who meets either of the following conditions:

6 (1) Is charged with one (1) of the following offenses or
7 attempted offenses:

8 (A) Battery (IC 35-42-2-1).

9 (B) Domestic battery (IC 35-42-2-1.3).

10 (C) Arson (IC 35-43-1-1).

11 (D) Stalking (IC 35-45-10-5).

12 (E) An offense involving a regulated explosive under
13 IC 35-47.5-5.

14 (F) A crime identified as a "crime of violence" in
15 IC 35-50-1-2(a).

16 (2) Is a security risk.

17 **Sec. 7. (a)** If a person resides in a county other than the county
18 in which the court has jurisdiction, the court may not place the
19 person on home detention as a condition of pretrial release unless:

20 (1) the person is eligible for home detention as a condition of
21 pretrial release in the county in which the person resides; and

22 (2) supervision of the offender will be conducted by the county
23 in which the person resides.

24 (b) If a person is:

25 (1) serving home detention in a county that operates a home
26 detention program; and

27 (2) being supervised by a probation department or community
28 corrections program located in a county other than the county
29 in which the court has jurisdiction;

30 the court may order that supervision of the person be transferred
31 to the county where the person resides if the person remains on
32 home detention in the other county.

33 (c) All home detention fees shall be collected by the county that
34 supervises the offender.

35 **Sec. 8. (a)** Each probation department or community
36 corrections department shall establish written criteria and
37 procedures for determining whether a person placed on home
38 detention as a condition of pretrial release qualifies as a flight risk
39 or a violent offender.

40 (b) A probation department or community corrections
41 department shall use the criteria and procedures established under
42 subsection (a) to establish a record keeping system that allows the

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department to quickly determine whether an offender placed on home detention as a condition of pretrial release is a flight risk or a violent offender.

(c) A probation department or community corrections department charged by a court with supervision of a flight risk or a violent offender placed on home detention as a condition of pretrial release shall provide all law enforcement agencies having jurisdiction in the place where the probation department or community corrections department is located with information on the flight risk or the violent offender supervised by the probation department or community corrections department. The information must include the following:

(1) The offender's name, any known aliases, and the location of the person's home detention.

(2) The crime with which the offender is charged.

(3) The name, address, and telephone number of the offender's supervising probation or community corrections officer for pretrial home detention.

(4) An indication of whether the offender is a flight risk or a violent offender.

(5) A photograph of the offender.

(d) Except for absences from the offender's home for reasons set forth in IC 35-38-2.5-6(1), a probation department or community corrections department charged by a court with supervision of an offender placed on home detention as a condition of pretrial release shall set the monitoring device and surveillance equipment to minimize the possibility that the offender can enter another residence or structure without a violation.

Sec. 9. (a) A contract agency described in subsection (b) or a probation department or community corrections department charged by a court with supervision of a flight risk or a violent offender placed on home detention under this chapter shall immediately contact a local law enforcement agency upon determining that a flight risk or a violent offender is violating a condition of home detention.

(b) A probation department or community corrections department charged by a court with supervision of a flight risk or a violent offender placed on home detention under this chapter shall use a monitoring device and surveillance equipment to maintain constant supervision of the flight risk or the violent offender. The supervising entity may do this by:

(1) using the supervising entity's equipment and personnel; or



(2) **contracting with an outside entity.**

SECTION 9. IC 35-38-2.5-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. As used in this chapter, "flight risk" means a person who is convicted of escape or attempted escape or failure to return to lawful detention.**

SECTION 10. IC 35-38-2.5-4.5, AS ADDED BY P.L.137-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. As used in this chapter, "security risk" means a person who is**

(1) a ~~flight risk~~; or

(2) a threat to the physical safety of the public.

SECTION 11. IC 35-38-2.5-4.7, AS AMENDED BY P.L.123-2002, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.7. As used in this chapter, "violent offender" means a person who is:**

(1) convicted of an offense or attempted offense, except for an offense under IC 35-42-4 or IC 35-46-1-3, under IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-43-1-1, ~~IC 35-44-3-5~~, IC 35-45-10-5, IC 35-47-5-1 (repealed), or IC 35-47.5-5; or

(2) ~~charged with an offense or attempted offense listed in IC 35-50-1-2(a), IC 35-42-2-1, IC 35-42-2-1.3, IC 35-43-1-1, IC 35-44-3-5, IC 35-45-10-5, IC 35-47-5-1 (repealed), or IC 35-47.5-5; or~~

(3) (2) a security risk. ~~as determined under section 10 of this chapter.~~

SECTION 12. IC 35-38-2.5-10, AS AMENDED BY P.L.1-2002, SECTION 146, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 10. (a) Each probation department or community corrections program shall establish written criteria and procedures for determining whether an offender ~~or alleged offender~~ that the department or program supervises on home detention qualifies as a **flight risk or** violent offender.**

(b) A probation department or community corrections program shall use the criteria and procedures established under subsection (a) to establish a record keeping system that allows the department or program to quickly determine whether an offender ~~or alleged offender~~ who violates the terms of a home detention order is a **flight risk or violent offender.**

(c) A probation department or a community corrections program charged by a court with supervision of ~~offenders and alleged offenders~~ **an offender ordered to undergo home detention shall provide all law**



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enforcement agencies ~~(including any contract agencies)~~ having jurisdiction in the place where the probation department or a community corrections program is located with a list of offenders ~~and alleged offenders~~ under home detention supervised by the probation department or the community corrections program. The list must include the following information about each offender: ~~and alleged offender:~~

- (1) The offender's name, any known aliases, and the location of the offender's home detention.
- (2) The crime for which the offender was convicted.
- (3) The date the offender's home detention expires.
- (4) The name, address, and telephone number of the offender's supervising probation or community corrections program officer for home detention.
- (5) An indication of whether the offender or alleged offender is a violent offender.

(6) A photograph of the offender.

(d) Except ~~for the offender's absence from the offender's home~~ as provided under section 6(1) of this chapter, a probation department or community corrections program charged by a court with supervision of ~~offenders and alleged offenders~~ **an offender** ordered to undergo home detention shall, at the beginning of a period of home detention, set the monitoring device and surveillance equipment to minimize the possibility that the offender ~~or alleged offender~~ can enter another residence or structure without a violation.

SECTION 13. IC 35-38-2.5-12, AS ADDED BY P.L.137-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) A **contracting entity described in subsection (b)**, probation department, or community corrections program charged by a court with supervision of a **flight risk or a** violent offender placed on home detention under this chapter shall cause a local law enforcement agency ~~or contract agency~~ described in section 10 of this chapter to be the initial agency contacted upon determining that the **flight risk or the** violent offender is in violation of a court order for home detention.

(b) A probation department or community corrections program charged by a court with supervision of a **flight risk or a** violent offender placed on home detention under this chapter shall maintain constant supervision of the **flight risk or the** violent offender using a monitoring device and surveillance equipment. The supervising entity may do this by:

- (1) using the supervising entity's equipment and personnel; or



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(2) contracting with an outside entity.

SECTION 14. IC 35-44-3-5, AS AMENDED BY P.L.137-2001, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A person, except as provided in subsection (b), who intentionally flees from lawful detention commits escape, a Class C felony. However, the offense is a Class B felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

(b) A person who knowingly or ~~intentionally violates a home detention order or~~ intentionally removes an electronic monitoring device commits escape, a Class D felony.

(c) A person who knowingly or intentionally fails to return to lawful detention following temporary leave granted for a specified purpose or limited period commits failure to return to lawful detention, a Class D felony. However, the offense is a Class C felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

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